COUNCIL AGENDA: 01-08-13 ITEM: (p.)



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Hans F. Larsen

David Sykes

SUBJECT: CURB CAFE

PILOT PROGRAM

DATE: December 10, 2012

Approved:

E Son

Date: 12/18/12

RECOMMENDATION

Approval of the following actions to establish a San José Curb Café pilot program:

- (a) Adopt an Ordinance amending various sections of Part 1 of Chapter 13.36 of Title 13 relating to encroachment permits upon public right of way and Part 12 of Chapter 20.100 of Title 20 of the San José Municipal Code relating to the permitting of sidewalk cafés.
- (b) Adopt guidelines for a pilot program to authorize up to five Curb Cafés within a one year period.

OUTCOME

The recommended actions will facilitate private investment for the construction and activation of Curb Cafés within City right of way subject to criteria for such uses. These actions meet a number of General Plan goals to develop a livable and active street environment.

BACKGROUND

A Curb Café is a non-exclusive encroachment upon public right of way that is improved and operated by an adjacent business that replaces one or more parallel parking spots with elements such as planters, trees, and benches, tables with chairs, fountains, artwork, or sculptures. Curb Cafés repurpose on-street parking spots. In the place of car parking, a platform is built to bring the grade of the sidewalk out into the street. Once the platform is installed, benches, tables, chairs, landscaping, and bike parking can be placed on the platform in order to provide a welcoming space along the street. Curb Cafés provide a solution to the desire for wider sidewalks and for outdoor food service. Curb Cafés are intended to provide space for people to sit, relax and enjoy the city around them in conjunction with a neighboring business, while providing aesthetic enhancements to the overall streetscape. Similar programs have been

December 10, 2012

Subject: Curb Café Pilot Program

Page 2 of 6

implemented in other jurisdictions such as San Francisco, New York, and Mountain View with a high level of success creating a more livable street environment.



Example of a Curb Café in San Francisco, also known as a "Parklet".

Curb Cafés have previously been implemented in the SoFA area by the San José Redevelopment Agency; however, the level of success for each individual location has varied depending on the adjacent uses. This pilot program proposes a different approach than previously used in San José, where the Curb Café improvements are requested and funded by an adjacent business owner in a manner similar to other jurisdictions.

At this time staff is seeking to implement a pilot program to authorize Curb Cafés on a temporary basis. The one-year pilot program would authorize no more than five projects through January 2014. During the pilot period, the benefits of the program will be evaluated and may result in possible expansion in the future.

ANALYSIS

As part of the proposed project staff reviewed and/or met with other jurisdictions to understand the different approaches for a successful program. Although none of the other programs exactly fit San José's desires, some of the key elements were applicable, including the following:

- The Curb Café construction will be privately funded by an adjacent business owner.
- Use of the Curb Café for table service will require a separate sidewalk café permit in accordance with the Zoning Ordinance.
- Applicants must comply with all applicable ABC regulations regarding alcohol use for their establishment, including the Curb Café.
- The proposal will be well used and active.

December 10, 2012

Subject: Curb Café Pilot Program

Page 3 of 6

• The proposal does not cause any safety or operational concerns.

Permit Process and Support

The permit process for construction will be managed by the Department of Public Works. The application will include the following:

- An encroachment permit application.
- A site plan that shows the proposed Curb Café and any associated work such as proposed meter removals.
- A diagram that demonstrates what types of elements will be included within the Curb Café such as tables, chairs, and umbrellas.
- Letters of support from the fronting property owners are required as part of the permit.
- A signed agreement indemnifying the City for any damages.

The Public Works Department will review the application to ensure that the Applicant meets the program requirements. A staff committee from various City departments (Transportation, Public Works, City Planning, Economic Development, and Police) will review each complete and correct application on a first-come-first-served basis using the following criteria:

- Enhancing the aesthetic quality of the streetscape.
- Location proposed Curb Cafe is likely to be well used and active.
- Documented and verifiable community support. This can include, but is not limited to, email, letters, or other written documentation.
- Compliance with this Policy, Chapter 13.36 of the San José Municipal Code, Zoning Ordinance requirements for sidewalk cafés, and any other federal, state and local laws that apply to the intended Curb Café.

Outreach and Public Notice

If the application is accepted for the pilot program, the City will post a public notice at the Applicant's location documenting the application for a Curb Café permit for a period of 10 days. The purpose of the notice is to alert the public of an application for a Curb Café permit and to provide the opportunity for the public to express its support for or opposition to that application. If any objections are raised during this process, staff will meet with the objector to determine if any modifications can be made to the proposal to satisfy any concerns. Ultimately, the Director of Public Works will make a final determination based on the proposal, expressed concerns, and overall benefit.

December 10, 2012

Subject: Curb Café Pilot Program

Page 4 of 6

Responsibilities of the Permit Holder

Once an application is approved, the Applicant will be required to execute a permit with the City and satisfy the following requirements:

- 1. Insurance. Permittee will be required to provide evidence of at least \$1 million in liability insurance, naming the City of San José as additional insured.
- 2. Maintenance. Permittee will be required to sign a maintenance agreement to keep all plants in good health and the Curb Café free of debris and grime. The surface of the Curb Café must be maintained daily and the area beneath the Curb Café must be rinsed out at least once a week. The County Department of Public Health may require pest abatement beneath the Curb Café platform. Permittees must maintain the gutter at all times to ensure proper cleanliness and drainage.
- 3. Furniture, etc. Any movable items, such as tables and chairs, must either be locked down at night or taken inside. Unsecured furniture is not permitted after Permittee's business hours.

Curb Café Removal

Permittee, at Permittee's sole cost, shall be responsible for removal of the Curb Café and restoring the right of way to its original condition upon the occurrence of one or more of the following:

- 1. The cessation of use.
- 2. Failure to comply with permit conditions or other legal requirements, or
- 3. The Curb Café poses a dangerous condition or threat to life or property.

If any violations occur, the applicant will be sent notice of the violations and, except in the case of dangerous or threatening conditions, will be given a maximum of five working days to remedy or remove the Curb Café. If in the event that the Permittee fails to timely or adequately maintain or repair the encroachment or remove the encroachment within the five working days, the permit will be terminated. Once the permit is terminated, the Curb Café must be removed at the sole cost of the Permittee within three days. When the encroachment causes a dangerous condition or threat of danger to life or property, the permit may be terminated immediately upon notice to the Permittee or with less than five days prior notice to the Permittee and may be removed immediately at Permittee's cost.

The City, at its sole discretion, may pay to remove the Curb Café and restore the public right-of-way to its pre-encroachment condition. The Curb Café program aligns with many of the goals of the General Plan Envision 2040 and helps implement major strategies including #6 Streetscapes for People and #9 Destination Downtown. As such, the City will at its own cost remove Curb Cafés if needed to support a successful implementation of the program.

December 10, 2012

Subject: Curb Café Pilot Program

Page 5 of 6

EVALUATION AND FOLLOW-UP

Staff will report back to the Community and Economic Development Committee to update the Council on the status of the pilot program.

POLICY ALTERNATIVES

If Council chooses not to approve the proposed ordinance amendment the private implementation of Curb Cafés will not be allowed in San José.

PUBLIC OUTREACH/INTEREST

Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)
Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)
Criterion 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. (Required: E-mail, Website Posting Community Meetings, Notice in appropriate newspapers)

While this item does not meet any of the criteria, this memorandum will be posted on the City's website for the Council agenda. Additional outreach will also be completed during implemention as described in the "Outreach and Public Notice" section of this report.

COORDINATION

Preparation of this report was coordinated with the City Attorney's Office and Budget Office.

FISCAL/POLICY ALIGNMENT

The recommended action aligns with the major strategies in Envision 2040 and with the City's economic development strategies to "create more walkable, vibrant, mixed-use environments to spur interaction and attract talent."

December 10, 2012

Subject: Curb Café Pilot Program

Page 6 of 6

COST SUMMARY/IMPLICATIONS

The City proposes to remove parking spaces for implementation of Curb Cafés at no cost to the applicant. It is estimated that the proposed five locations will result in the removal of a maximum of 10 parking spaces. The estimated value of the 10 parking spaces which are proposed to be allocated to the Program is estimated at \$1200 a month. While allocating some of these spaces to the Curb Café Program may reduce revenues in the General Purpose Parking Fund, it is difficult to quantify the impact. Some downtown drivers who may find metered parking unavailable in one location due to this program may ultimately find metered parking available in another location, or utilize the parking garages, which charge a higher rate. Should this program be approved by the City Council, utilization will be studied over the term of the pilot to see if this program substantially impacts revenue collections. This analysis will be included in any future recommendations to the City Council related to the Curb Café program.

CEQA

Exempt 15304(b), File No. PP12-103

/s/

HANS F. LARSEN Director of Transportation /s/

DAVID SYKES
Director of Public Works

For questions please contact Harry Freitas, Assistant Director of Public Works, at (408) 535-8488.

Attachment



"CURB CAFÉ" PILOT PROGRAM December 2012

BACKGROUND AND PURPOSE

A Curb Café is café area developed and operated by an adjacent business that replaces several parallel parking spots with elements such as planters, trees, benches, tables with chairs, fountains, artwork, or sculptures. Curb Cafés repurpose on-street parking spots. In the place of car parking, a platform is built to bring the grade of the sidewalk out into the street. Once the platform is installed, benches, tables, chairs, landscaping, and bike parking can be placed on the platform in order to provide a welcoming space along the street. Curb Cafés provide a solution to the desire for wider sidewalks and for outdoor food service. Curb Cafés are intended to provide space for people to sit, relax and enjoy the city around them in conjunction with a neighboring business and provide aesthetic enhancements to the overall streetscape.

The City of San José is seeking to implement a pilot program to authorize Curb Cafés on a temporary basis. The one year pilot program would authorize no more than five (5) projects through January 2014. During the pilot period, the benefits of the program will be evaluated and may result in possible expansion in the future.



Example of a Curb Café in San Francisco, also known as a "Parklet"

The eligible applicants for a Curb Café are the storefront business owners for their non-exclusive use. Restaurant or café Applicants may also use the Curb Café for table service subject to also obtaining a sidewalk café permit in accordance with Title 20 of the San Jose Municipal Code.

APPROPRIATE LOCATION AND DESIGN PARAMETERS

Curb Cafés must meet all the following requirements:

- 1. Located 10 feet away from a corner.
- 2. Located on a street with a speed limit of 25 mph or less or on a Primary Bikeway Corridor.
- 3. Shall not interfere with vehicle traffic lanes, including bicycle lanes.
- 4. Proximity to other Curb Cafés.
- 5. The width of the Curb Café must not extend beyond six (6) feet from the curb line.
- 6. Safe hit posts and wheel stops are required. See the Diagram 1 showing the placement of these materials as a guideline for submittal.
- 7. As determined by the Department of Public Works, an edge to the Curb Café will be required, such as planters, railing, or cabling. If cable railing is used, the vertical spacing between cables cannot exceed 6 inches.
- 8. Curb Cafés are not permitted in red zones.
- 9. Curb Cafés may replace a yellow zone, blue zone, or motorcycle parking if there are appropriate adjacent locations for these zones to be relocated and the applicant pays additional fees and costs to relocate these zones.
- 10. Curb Cafés are not permitted in front of a fire hydrant or in any manner that restricts access to any public utility company or City utility covers, valves, etc.
- 11. Curb Cafés will not occupy more than two (2) parking spaces unless there are special circumstances that would be approved by the Transportation and Public Works Departments.
- 12. The applicant must submit a letter of support from the property owner(s) that front the proposed Curb Café.
- 13. The Curb Café must be designed to be an aesthetic improvement to the streetscape, and must be constructed with materials that will be safe for the intended use, of high quality, durable, and beautiful.
- 14. Access panels in order to maintain the gutter and area underneath the Curb Café must be included and the design must allow drainage along the gutter to pass underneath the Curb Café.

Diagram 1

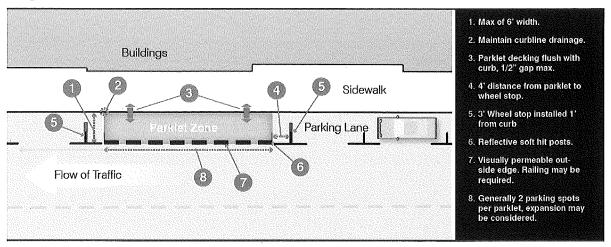


Diagram I provides only general guidance for the Curb Café design. Final design elements of any application will be approved by the Department of Public Works.

APPLICATON PROCESS

1. SUBMIT APPLICATION

- a. **Application Form.** All Applicants must complete the attached application form. Applications may be denied for the following reasons:
 - (1) Incomplete applications will not be accepted.
 - (2) Inactivity for a period of three months.
 - (3) Failing to meet any required deadlines.
 - (4) Not timely completing the application.
- b. **Site Plan.** All Applicants must provide a plan with their application form that clearly includes and indicates all of the following information:
 - (1) The footprint of the proposed Curb Café, including sufficient detailed information to inform the design elements on either end of the proposed Curb Café.
 - (2) Indicate all property lines, sidewalk width, Curb Café length and width, existing parking stalls, and all surface obstructions within 15 feet of the occupied area (e.g., fire hydrants, streetlights, parking meters, street trees, other Curb Cafés, etc).
 - (3) The number(s) on all parking meters that are to be removed must also be included in all drawings. These numbers are generally posted on the meter facing the street.

- (4) Provide as much detail as possible to aid in the Department's review of the application.
- c. **Curb Café Programming.** Applicant must demonstrate what types of elements are proposed on the Curb Café (e.g. tables and chairs, benches, landscaping, bike parking, etc.)
- d. **Support.** A letter from fronting property owner(s) is required. Each Applicant must adequately and robustly involve its community in the development of the proposal by involving its neighbors, tenants of the subject property, and any existing merchant or neighborhood groups. The Applicant must provide reliable and verifiable documentation of support in the form of a letter, a petition, email, etc.
- e. **Indemnity and Hold Harmless.** Each Applicant must provide a signed agreement to defend, indemnify, save, and hold harmless the City and all its officer, agents, or employees from any liability for damages resulting from any and all operations under the permit in a form approved by the City Attorney.

2. PUBLIC WORKS DEPARTMENT REVIEW

The Public Works Department will review the application to ensure that Applicant meets the program requirements. A staff committee from various City departments (Transportation, Public Works, City Planning, Economic Development, Police) will review each complete and correct application on a first-come-first-served basis using the following criteria:

- a. Enhancing the aesthetic quality of the streetscape.
- b. Location proposed Curb Café is likely to be well used and active
- c. Documented and verifiable community support. This can include, but is not limited to, email, letters, or other written documentation.
- d. Compliance with this Policy, Chapter 13.36 of the San José Municipal Code, and any other federal, state and local laws that apply to the intended Curb Café.

3. PUBLIC NOTICE PERIOD

If the application is accepted for the pilot program, the City will post a public notice at the Applicant's location documenting the application for a Curb Café permit. The public notice must be posted for 10 calendar days. The purpose of the notice is to alert the public of an application for a Curb Café permit and to provide the opportunity for the public to express its support for or opposition to that application. If no objection is registered, skip to step 5. If an objection is registered, see Section 4 below.

If the application is not accepted, the applicant will have 10 days to resubmit.

4. OBJECTIONS RAISED DURING PUBLIC NOTICE PERIOD

a. The Curb Café must provide proof of community support with application, prior to the public notice period.

- b. If the Department receives objections from the public for a specific location, it will meet and review the application with the objector to determine if there are feasible alternatives to make the Curb Café acceptable. Final objections will be submitted in writing to the Director of Public Works.
- c. The City may require redesign of the Curb Café to attempt to alleviate any objections.
- d. If objections to the project are still outstanding, the Director of Public Works will make a final determination on the permit based on the proposal, expressed concerns and overall benefit.
- e. If the Director ultimately rejects the application, the applicant will have 10 days to appeal the decision.

5. FINAL PLANS SUBMITTED AND PUBLIC WORKS APPROVAL

For those Applicants with an accepted initial application, the next step is to submit a fully detailed site plan, cross sections, and elevations. Public Works staff will work with the Applicant in a collaborative fashion during this period to ensure that the Curb Café design is appropriate and that the final drawings produced meet requirements.

6. CITY APPROVAL OF FINAL PLAN

The Public Works Department will coordinate with the Department of Planning, Building and Code Enforcement (PBCE), the Police Department (SJPD) and the Department of Transportation (DOT) for completion of the plans. Applicants may receive additional comments that will need to be incorporated into the final plan prior to permit approval.

7. PUBLIC WORK ISSUES PERMIT

- a. Within 10 days from submittal of a Final Plan, if it is determined by the Director/Department that the application satisfies all policy requirements and the Applicant has paid all necessary fees, the Department of Public Works will grant final approval and issue a permit.
 - (1) The permit shall include but not be limited to the following:
 - i. Address
 - ii. Location Map
 - iii. Plan View
 - iv. Elevations
 - v. Structural Design
 - vi. Construction Details
 - vii. And any other requirements as determined by the Department/Director.
- b. Within 10 days of submittal of a Final Plan, if it is determined that the application fails to satisfy all requirements, the Department of Public Works will issue the permit.

- (1) If denied, the Applicant will have 15 days to make corrections and resubmit a Final Plan.
- (2) If denied three times the Denial is final.

8. CONSTRUCT CURB CAFÉ

Upon permit issuance and as a condition of permit approval, Applicants are required to inform the Department of Public Works no less than 10 days before beginning any site work. Once an Applicant has completed installation of the Curb Café, Applicant must notify Public Works Inspection.

9. SIDEWALK CAFÉ AND OTHER PERMITS

In conjunction with the Curb Café permit, the Applicant is required to obtain a sidewalk café permit and any other applicable permit. The permit requirements can be found at the planning website.

http://www.sanjoseca.gov/planning/applications/dev_sc_app.pdf

10. CALIFORNIA ALCOHOLIC BEVERAGE CONTROL (ABC)

Applicants must comply with all applicable ABC regulations regarding alcohol use for their establishment, including the Curb Café. The issuance of the Curb Café and sidewalk café permits does not constitute any ABC approval or zoning approval for alcohol use by the City.

COSTS

At the time of submission of the initial permit application, Applicants will be required to pay the following fees for cost recovery of time and materials:

- \$600 base fee for all applications; and
- Sidewalk Café permit fees

Unless otherwise stated in this policy, Applicants will also be responsible for all costs associated with design, installation, and removal of the Curb Café.

RESPONSIBLITIES OF THE PERMIT HOLDER

Once an application is approved, the Applicant will be required to execute a permit with the City and satisfy the following requirements:

- 1. Insurance. Permittee will be required to provide evidence of at least \$1M in liability insurance, naming the City of San José as additional insured.
- 2. Maintenance. Permittee will be required to sign a maintenance agreement to keep all plants in good health and the Curb Café free of debris and grime. The surface of the Curb Café must be maintained daily and the area beneath the Curb Café must be rinsed out at least once a week. The County Department of Public Health may require Applicants to provide pest abatement beneath the Curb Café platform. Permittees must maintain the gutter at all times to ensure proper cleanliness and drainage.

3. Furniture, etc. Any movable items, such as tables and chairs, must either be locked down at night or taken inside. Unsecured furniture is not permitted after Permittee's business hours.

CURB CAFÉ REMOVAL

Permittee, at Permittee's sole cost, shall be responsible for removal of the Curb Café and restoring the ROW to its original condition upon the occurrence of one or more of the following:

- a. the cessation of use,
- b. failure to comply with permit conditions or other legal requirements, or
- c. the Curb Café poses a dangerous condition or threat to life or property.

The City may remove the Curb Café for any of the following reasons:

- a. Failure to maintain,
- b. Violation of this Pilot Program Policy,
- c. Violation of the Permit,
- d. Modifications unapproved by the City,
- e. When the Curb Café encroachment causes a dangerous condition or threat of danger to life or property as determined by the Director of Public Works. This includes but is not limited to:
 - The Curb Café is encroaching into a travel lane or bike lane
 - The Curb Café has lost structural integrity
 - A gap develops between the Curb Café and sidewalk
 - The Curb Café creates a visibility issues
- f. These conditions will be part of the encroachment permit

If any of the above violations occur, the applicant will be sent notice of the violations and, except in the case of dangerous or threatening conditions, will be given a maximum of five working days to remedy or remove the Curb Café. If in the event that the Permittee fails to timely or adequately maintain or repair the encroachment or remove the encroachment within the five (5) working days, the permit will be terminated. Once the permit is terminated, the Curb Café must be removed at the sole cost of the Permittee within 3 days. When the encroachment causes a dangerous condition or threat of danger to life or property, the permit will be terminated without the five (5) day notice and removed immediately at Permittee's cost.

The City, at its sole discretion, may pay to remove the Curb Café and restore the public right-of-way to its pre-encroachment condition.

TRANSFER OF PERMITS

If the Permittee sells its business interests, one of the following must be done:

- 1. Remove the Curb Café; or
- 2. With the City's approval, Purchaser and Permittee must come into the Department and execute a new permit in the purchaser's name with their signature.

PILOT PROGRAM CHANGES

The City reserves the right to amend the Curb Café Pilot Program and all terms contained within it up until the point that a final permit is issued. Applicants may withdraw their application if they do not agree with any of the Policy changes.

QUESTIONS

For any questions, please contact Harry Freitas at <u>Harry.Freitas@sanjoseca.gov</u> or (408) 535-8488